Margin of Appreciation Doctrine

DISCUSSION

When states their margin of discretion “margin of appreciation ”
exercise too broadly, there may be several and so inconsistent interpretations of their international legal obligations originate

Ultimately, the court has to choose.
The final decision on how much leeway should be given to national authorities depends depends on the weight the Court attaches to the following factors: the European consensus, the nature of the right and purpose pursued by the contested measure. This is why the key to understanding how and where discretion legitimately arises is to fully understand which ones means the court tries to strike a reasonable balance between the two interests.
Nevertheless, the coding of how the discretion applies is large importance, **since the Convention was established not in the interest of the states, but in the importance of their citizens** .

Law - including criminal law - should primarily be there to protect the impotent, which is exactly the other way around in the Netherlands. protects and benefits the political and economic ruling class. Law is a monopolitan means of power of the ruling class. class with its own state of rulers in the state. As soon as whistleblowers reach out, the system closes any attack on the state and the system is immediately blocked by the Public Prosecution Service and the judges to the detriment of the social emancipation and the development possibilities of the weak or powerless. *[The government turns political opponents and human rights defenders by medicalising a conflict with the same government or the established order use too making criminal inspectors who have no problem with their medical responsibility to shake hands with them fraudulent claims cited in psychiatric reports].* The government detests and willfully banish scientists doubts about orthodox views. Very often whistleblowers, who on shortcomings in current theories or interpretation, are of vested interests are labeled as eccentrics. So that their ideas can then be easily ignored They are also systematically prevented from attending conferences so that their ideas cannot find an audience. deliberate barriers to holding back free scientific thought are extremely unscientific and criminal. *[the case of defense whistleblower Spijkers was an obvious case of political abuse of psychiatry according to SS-fashion model].* Appearance of bona fide by the Dutch government, which they awaken with reports and speeches on human rights, act as a cover for rapacious and profit-driven criminal practices.

The State of the Netherlands is abusing the MARGIN OF APPRICIATION in the interest and benefit of the State using an expensive state attorney, so not in the interest of their citizens to prefer the upper or lower limit of the margin of appriciation, again and again, as appropriate again in favor of the Netherlands. This is an individual or NGO in advance without a chance against the powerful State to be able to obtain justice.
https://archive.org/details/rutte-almacht-overheid

MARGIN APPRICIATION

At the level of the European Convention on Human Rights, a wide discretion allocated to a certain "tolerance" accorded to the organs of Strasbourg (Member States) will allow to national legislative, executive, administrative and judicial bodies ". ... It is in 1956 in the jurisprudence of the European Convention to protection of human rights.
ICESCR which has no exception clause. The current COVID-19 pandemic can be considered 'public' are classified emergency that threatens the life of the nation ”and deviation from obligations entered into under the ECHR, this can be regarded as essential to the "safety of the people".

However, this does not mean that the States have unlimited power in this regard. According to article 15 (1) ECHR, it is possible to deviate "to the extent strictly required by needs of the situation "and provided that the measures do not conflict with the others obligations of the state under international law.

Source: rug.nl
Aikaterini Tsampi, university lecturer in public international law, cross-border department affairs Law, Faculty of Law, University of Groningen.
27-03-2020, (article originally in English): Public Health and the European Court of Human Rights: Using Strasbourg's Arsenal in the COVID-19 Era.

THE DUTCH COURT AND THE MARGIN OF APPRECIATION The role of the margin of appreciation in the internal horizontal relationship between the judge, the legislator and the administration Niels Jak & Jantine Vermont, (NJCM-Bulletin, Vol. 32 (2007), No. 2).

Judicial review against one every connecting international treaty provisions

The contribution of the Dutch court to the promoting the international legal order and the need to be able to keep doing this
Mariam Chébti

Monism takes as its starting point the international and national legal order constitutes one legal system. The **application** of **international standards** in the **national legal order** takes place **directly** , **without the intervention** of one rule of **national law** . In case of incompatibility between rules of

international and domestic law, **international law should prevail to get on national law** .
Source: Supreme Court of the Netherlands
The national court and the international law: the binding nature and application of treaty provisions
BA Kuiper-Slendebroek

National courts and international law

In a multi-tiered legal order, the judge has to deal with interpretations application questions regarding international sources of law. This contribution goes on the 'provisions of treaties binding on everyone' in the sense of the Articles 93 and 94 of the Constitution.
A treaty establishes agreements between states. According to the *pacta* principle *sunt servanda* - included in article 26 of the Vienna Convention on Treaties1 - are states bound by the signing of a treaty the contained herein to keep appointments. An internationally concluded treaty applies within a state according to the rules laid down in national law.
In the Netherlands, this effect is governed by the Constitution - in particular Articles 91, 93, 94 and 120 - and the Kingdom Act approval and publication endure. Article 93 of the Constitution reads as follows:
'Provisions of treaties and decisions of international law organizations, that can connect everyone according to its content, have binding power after they have been published. '
Also in Article 94 of the Constitution, the term 'provisions binding on everyone' is

is used, this time to indicate that it is possible to use these provisions give precedence to national legal requirements. 2 By judges and synonyms used in the literature for 'connecting everyone' are 'direct effect 'and' direct effect '. 3 Individuals can use these provisions appeal directly to the court.

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1 *Trb* . 1972, 51.
2 Article 94 GW: There are no statutory regulations applicable within the Kingdom application, if this application is not compatible with provisions that are binding on all of treaties and decisions of international law organizations.
3 See, among others: Report of the State Commission on the Constitution, November 2010, p. 130-131.

"Margin of Appreciation" (note international treaties do not have this arrangement, it is for the EU treaties) There is a risk that the national court will issue the Margin of Appreciation is abused for the benefit of the Dutch State by becoming a victim or upper limit to choose how it suits the State itself to its own advantage. Often is there is also no justification by the court about how the assessment was reached. This one arbitrary manner is not allowed.
https://archive.org/details/de-nederlandse-deur-en-de-margin-of-appreciation
Judicial review against one every connecting international treaty provisions
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House of Representatives (art.93-94 constitution)
https://archive.org/details/kst-31570-22

Information about constitutional aspects of (planned) crisis measures

The House of Representatives has requested advice from the Council of State on the fundamental law aspects of (planned) crisis measures related to the corona pandemic.
Fundamental right
Fundamental social right would violate a classic fundamental right - should the limitation clause of the classical fundamental right must be observed. That means one classical fundamental right cannot be set aside by invoking a duty of care arising from a social fundamental right would arise.
EU treaty law
Another important condition is that the restrictions on the basis of the ECHR and the EU Charter must be necessary and proportional. The EU Charter specifically requires that restrictions should always respect the essential content of fundamental rights. In doing so, it acknowledges ECtHR that states that treaty states in taking preventive measures in view of the health protection a considerable margin of appreciation, or 'margin of appreciation' to have. Having regard to the undeniably overriding importance of public health at stake,

the emergency regulations meet these requirements.
Remark Council of State
Furthermore, the Department of the Council of State only discusses the fundamental rights in the Constitution, the

ECHR and the EU Charter of Fundamental Rights (EU Charter). Other legal sources such as international treaties are not included in this advisory report. That also applies to the relationship between the measures taken and other EU law.
(summary IFUD of Human Rights)
However, the Dutch court is bound by art. 94 Gw, pursuant to any provision within the Kingdom applicable statutory regulations do not apply, if this does not apply compatible with any binding provisions of treaties. The ECtHR that states treaty states do have considerable discretion, or 'margin of appreciation' provided that such measures are not inconsistent with its other obligations under international law 'provisions of treaties binding on everyone' within the meaning of Articles 93 and 94 of the Constitution. A treaty establishes agreements between states. According to the principle *pacta sunt servanda* -
included in Article 26 of the Vienna Convention on Treaties - are states by signing one treaty bound to fulfill the agreements contained therein. An internationally concluded treaty applies within a state according to the rules laid down in its national law.
In the Netherlands, this effect is governed by the Constitution - in particular Articles 91, 93, 94 and 120 - and the Statute Law Approval and Publication Conventions. Article 93 of the Constitution sounds like this:
'Provisions of treaties and decisions of international law organizations, according to their content can bind each one, have binding power after they are made known. ' Also in Article 94 of the Constitution, the term 'provisions binding on everyone' is used, this time to indicate indicate that it is possible to give these provisions precedence over national legal ones
The synonyms used by judges and in the literature for 'binding on everyone' are `` direct effect " and `` direct effect. " Individuals may apply a appeal directly to the court. Ultimately, the court has to choose.
Siracusa Basics
These measures by the State must be in accordance with the Siracusa principles of 1984 on the conditions under which governments can restrict human rights during a public health emergency.
The EU human rights treaties were not established in the interest of the states, but in the importance of their citizens. The State of the Netherlands abuses the MARGIN OF APPRICIATION in the interest and advantage of the State by always setting the upper limit or lower limit of the margin or prefer appriciation in favor of the State itself. Here with the citizens over and over again with
In this way, the State presses them all together with regard to their human rights
Their fascist agenda by pushing aside international treaties, including beyond the to keep advices. The international treaties have no margin of appriciation as with
EU treaties
well the case. The International Conventions have no discretion, and must are interpreted in favor of the human rights of the citizens.
House of Representatives, 2011-2012 session, 31 570, no. 22
International law is a direct part of the Dutch legal order. In addition, goes into our country has international law over Dutch law. It has been determined that international law of one higher order than our Constitution.
Supreme Court of the Netherlands
Judicial review against any binding international treaty provisions. The contribution of the Dutch courts to promote the international legal order and the need to do so can continue to do. *Mariam Chébti*
Monism assumes that the international and national legal order is one legal system. The application of international standards in the national legal order takes place

directly, without the intervention of a rule of national law. In case of incompatibility between rules of international and national law serves international law should take precedence over national law.

EMERGING VOICES: IS THE MARGIN OF ASSESSMENT ATTRIBUTED TO THE MEMBER STATES OF THE EUROPEAN UNION TOO WIDE, THEREFORE VIOLATIONS OF THE BECOME INTERNATIONAL LAW ALLOWED?

OpinioJuris
Jenny Poon
16-08-2016

EMERGING VOICES: IS THE

MARGIN OF ASSESSMENT ATTRIBUTED TO THE MEMBER STATES OF THE EUROPEAN UNION TOO WIDE, THEREFORE VIOLATIONS OF THE BECOME INTERNATIONAL LAW ALLOWED?

Jenny Poon
16.08.16 |
The topic covered in this post is based on a paper titled State
Discretion on Asylum Claims Procedures: Violation or Adherence to Non-Refoulement? All websites
opened on July 22, 2016. The author would like to thank Dr. Valerie Oosterveld for reviewing
an earlier concept.]
Introduction
The margin of appreciation is an institution of the European Court of Human Rights (ECHR),
in which the ECtHR grants the Member States of the European Union (EU) honor when the national
authorities use their discretion to perform tasks under international
law, what it argues, can sometimes be so broadly accorded that the margin of appreciation is the
Member States may allow them to deviate from their international legal obligations. The idea that the
discretion is not yet a fixed part of the law, Greer explains
his paper repeated. The doctrine first appeared in the case law of the ECtHR in the
Cyprus case (Greece v United Kingdom). Despite an established presence in the
jurisprudence of international tribunals, the scope of the doctrine is nevertheless uncertain, such as
by Shany in his paper is argued. Thus, international courts and tribunals have conflicting
statements made on the use of the discretion. In particular, the ECHR applied the
doctrine in the Handyside Decree and stated that the doctrine applies to domestic
legislators and on judicial bodies, while the dispute settlement body of the
World Trade Organization (WTO) and its Appellate Body in the Asbestoside have declared the case

that the doctrine only applies to WTO members. In the first case, get both domestic
legislators and courts have a margin of discretion in applying the law, while in
in the latter case, only the national authorities of WTO member states are given a margin of discretion
making discretionary decisions.
Despite the fact that the law is restless with regard to the margin of discretion, this doctrine becomes
nevertheless applied by the ECtHR to show respect to EU Member States when Member States submit their
use discretion to comply with obligations under international law
come. Consequently, this interpretation of the margin of discretion renders the infringement of the
international law in the context of asylum possible, where it allows EU member states to deviate from
their duty to ensure procedural safeguards leads to multiple and thus inconsistent ones
interpretations and placed above the interests of asylum seekers. Clarity in the law is therefore
provided with regard to defining the extent to which the "margin of discretion" of
application and where the boundary should be drawn to ensure vulnerabilities
of asylum seekers are properly addressed.
A wide margin of discretion allows for violations of international law
The first argument I would like to make is that EU Member States have a wide margin of discretion
proposes to deviate from their duty to ensure adequate procedural safeguards
asylum seekers. International law obliges states to comply with procedural guarantees,
including granting asylum seekers with the opportunity to be heard and the right
to appeal in the context of an eviction notice in accordance with Articles 32 (2) and 32,
paragraph 3 of the Refugee Convention . Procedural safeguards come in many forms, including the
ensure that asylum applications are examined on their merits and prevent cases of
bias influence the decision-making process. This is illustrated in the case
from OS vs. Interior Ministry , where the Supreme Court of the Czech
Republic ruled that the Ministry of the Interior had made a mistake in it
basing his asylum decision to reject an application on an incorrect assessment of Turkey,
which followed biased decision-making. The Ministry had been
discretion exercised by basing its decision on a biased country of origin
report. After based his decision on a report that was political and none at the time
Accurate assessment of Turkey, the Interior Ministry had the
biased decision-making. This case shows that there is a wide margin of discretion in the EU Member State
to deviate from its international duty to provide procedural safeguards
for asylum seekers, thereby violating international law.
Next, I argue that a wide margin of discretion allows EU member states to control several and thus
create inconsistent interpretations, leading to inconsistency and unpredictability of the law.
When states exercise their discretion too widely, there can be several and thus inconsistent ones
interpretations of their international legal obligations arise. The ECtHR case ofHirsi
Jamaa and Others v Italy i llustreert differences in interpretation between the EU Member States of their
obligations under international law. The ECtHR held that differences in interpretation of
asylum decisions can be the result of bilateral treaties between the first and the next
EU Member States receiving asylum. This case illustrates that the EU Member States have a wide margin of discretion
enables them to interpret their international legal obligations differently. although
differences of interpretation may be justified under certain circumstances, for example, to
to take into account the unique geopolitical circumstances of different EU Member States,
there is too much room for EU Member States to widen their margin of interpretation if the
margin of assessment is too large and therefore incorrect. international law obligations, and result in
such a great divergence between EU member states that the original purpose of the doctrine would not be
justify. Another problem with a wide margin of discretion is that it can lead to one
increased likelihood of multiple and thus inconsistent interpretations, increasing the likelihood of that

international law is being violated by EU member states.

Finally, I conclude with the statement that a wide margin of discretion allows EU Member States to do so to put state interests above the interests of asylum seekers. EU member states practice their discretion when dealing with asylum applications on the basis of discretion, which is sometimes earlier political considerations than merits entails. An example can be taken from the Ireland v. United Kingdom case , in which the ECtHR held that "the national authorities are in principle in a better position than the international courts to decide [on the derogation from Article 15 of the European Convention on Human Rights In this matter late Article 15 (1), the authorities have a wide margin of discretion ". This case is used as an example to illustrate that the discretion may be too wide in the case of a derogation in times of emergency (Article 15), which, when the derogation is solely on political criteria based, EU member states can allow to violate international law. Depending on the the political agenda at the time, the EU member state can, for example, choose to do its duty to to handle asylum applications strictly or broadly, depending on the then state interests, leading to uncertainty and unpredictability of the law for asylum seekers. The case shows that where the discretion granted to an EU Member State is too large is, the member state can use the doctrine to their advantage to promote their political agendas, often at the expense of asylum seekers. This motivation to achieve goals interested by the state, makes it possible to violate international law in cases where the interests of the EU Member State above the interests of the asylum seeker. It is argued that a spacious discretion allows the EU Member State to misuse the doctrine to fulfill their obligations circumvent the field of international law. While some may argue that one flexible discretion would encourage the EU Member State to endorse and adopt the standard support, the concern is that too much flexibility and therefore too wide a margin of discretion

Conclusion

The purpose of this function is to reflect on the effects of the margin of appreciation doctrine in the context of asylum, where this can sometimes lead to EU member states having their international law circumvent obligations. I hope that illustrating the teaching in this context will help the debate on it propose solutions to this perceived problem. It is important that the rights of the vulnerable, such as asylum seekers, are protected from the powerful state powers with good resources. Therefore, it must be the correct application of the discretion be clarified to prevent EU Member States from moving beyond the permitted borders of the discretion act at the expense of the asylum seekers.

subjects

Margin of Appreciation Doctrine

In the article on the rights of refugees in international treaties and abuse of "Margin of Appreciation "by states, is of course not only for refugees but also for the citizens of the Netherlands. So it is about the interpretation of the doctrine.